

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-3045**September Term, 2023****1:21-cr-00140-JDB-1****Filed On:** March 1, 2024

United States of America,

Appellee

v.

Larry Rendall Brock,

Appellant

BEFORE: Millett and Pillard, Circuit Judges, and Rogers, Senior Circuit Judge

ORDER

Upon consideration of the motion to reconsider release pending appeal and the opposition thereto, it is

ORDERED that the motion be denied without prejudice to its renewal before the district court in light of the court's opinion issued today in Brock's direct appeal.

Brock argues that he poses no risk of flight or danger to the community under 18 U.S.C. § 3143(b)(1)(A), and that, in light of the Supreme Court's grant of certiorari in *United States v. Fischer*, see No. 23-5572, 2023 WL 8605748 (Dec. 13, 2023) (mem.), there is a substantial question of law under 18 U.S.C. § 3143(b)(1)(B) regarding whether the conduct of which he was charged and tried is covered by 18 U.S.C. § 1512(c)(2). He contends that, without relief in advance of the decision in *Fischer*, he will likely serve more time under his existing sentence while awaiting the Supreme Court's decision than he would serve under an appropriate sentence if his section 1512(c)(2) conviction were reversed.

The government opposes Brock's motion, and requests at most a remand for the district court to assess developments that the government believes may bear on Brock's eligibility for relief under Section 3143(b)(1)(A) "based on risk of flight and/or dangerousness." Gov. Br. 6.

We deny the motion without prejudice to Brock filing a motion in the district court for release pending further appellate or Supreme Court review. The government does not dispute that Brock's appeal "raises a substantial question of law." 18 U.S.C. § 3143(b)(1)(B). And we assume without deciding that resolution of that question in Brock's favor would likely result in "a reduced sentence to a term of imprisonment less

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than the total of the time already served plus the expected duration of the appeal process.” 18 U.S.C. § 3143(b)(1)(B)(iv). We do not resolve those threshold issues, however, because disposition of Brock’s motion calls for both factfinding and an exercise of further sentencing judgment by the district court. In particular, it requires a determination whether Brock can show by “clear and convincing evidence” that he “is not likely to flee or pose a danger to the safety of any other person or the community,” 18 U.S.C. § 3143(b)(1)(A), and, if all other requirements are met, a calculation of a “likely reduced sentence” pending the Supreme Court’s decision in *Fischer*.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk